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IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

I.A. NO. \_\_\_\_\_ OF 2013  
IN

WRIT PETITION (CIVIL) NO. 494 OF 2012

**IN THE MATTER OF:**

Justice K.S. Puttaswamy (Retd) & Anr. ...Petitioner

Versus

Union of India & Ors.

...Respondents

**AND**

**IN THE MATTER OF:**

1. Dr. Rajendra Sadanad Burma,  
R/o Paratwada, Distt. Amravati,  
(Maharashtra),

2. Dr. Ravindra Deorai Kolhe,  
R/o Bairagadh, Tq. Dharni,  
Distt. Amravati,  
(Maharashtra)

...Applicants

Versus

1. Union of India,  
through Ministry of Personnel Affairs,  
New Delhi.

2. State of Maharashtra,  
Through its Chief Secretary,  
Mantaralaya, Mumbai-32  
Maharashtra

3. Secretary,  
Department of Tribal Development,  
Mantralaya, Mumbai-32,  
Maharashtra.

...Non-Applicants

**APPLICATION FOR DIRECTIONS**

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA,  
AND HIS COMPANION JUDGES OF THE HON'BLE  
SUPREME COURT.

The humble application of the  
applicants above-named;

**MOST RESPECTFULLY SHOWETH:**

1. The applicants are filing this application for direction as against the non-applicants for direction to the non-applicant Nos. 2 and 3 not to insist for the ADHAR Card for seeking benefit of the schemes floated by non-applicant Nos. 2 and 3 for the benefit of tribal people of the State of Maharashtra. The facts leading to the filing of the application in nut shell are as under.

2. The applicant No.1 is a practicing doctor in the Paratwada town adjoining Melghat Tribal region of the Amravati District which has become infamous for malnutrition death since 1991-92. The applicant No.2 is also a practicing doctor who has done his post

graduation in preventive social medicine and is rendering services to poor strata of the tribal populace of the Melghat region. The applicants had filed public interest litigation before the High Court of Bombay which has been registered as PIL No. 133 of 2007. Various orders have been passed by the High Court of Bombay and presently the said PIL is listed for hearing on 20<sup>th</sup> December, 2013.

3. The applicants respectfully submit that since 1991-92 till 2012-13 near about 15 thousand children have lost their lives because of the malnutrition in Melghat Region. The said region consist of two tribal Talukas and at the stage it is necessary to mention here that there are in all 15 districts in the State of Maharashtra which are dominated by tribal people.

4. The applicants submit that the critical position about the malnutrition death occurred in 1991-92 when Hon'ble Mr. Sharad Pawar was the Chief Minister of the State of Maharashtra and PIL came to be filed in the Nagpur Bench of the Bombay High Court and various directions were issued and as a result of

which the death ratio was reduced to 50% in the year 2000 because number of schemes were floated by the non-applicant No.2 and their implementation was monitor by the High Court. Subsequently in 2002-2003 again due to laxity on the part of the non-applicant Nos. 2 and 3 in implementing the various welfare schemes, the death because of malnutrition suddenly increased and there were about 500 children who died in the Melghat region. A suo motu PIL came to be registered bearing Writ Petition No. 5629 of 2004 before the High Court of Bombay and after hearing the non-applicant Nos. 2 and 3, a bench presided over by Hon'ble Justice R.M. Lodha and Justice S.A. Bobde issued various directions against the non-applicant Nos. 2 and 3. It is not necessary to detail all the directions here since the copy of the order as passed in the said case dated 20<sup>th</sup> September 2006 is filed herewith and marked as ANNEXURE A-1 (Page...9...13...)

5. The applicants submit that in view of the said directions the State was directed to bring the malnutrition to zero percent upto the year 2011. That

since the malnutrition death increased from 2007 onwards, a PIL came to be filed by the present applicants before the High Court of Bombay registered as PIL No. 133 of 2007.

6. The applicants submit that in the year 2011-12 around 450 children lost their lives because a malnutrition and in the year 2012-13 475 children lost their lives due to malnutrition in Melghat region. The applicants have moved the application for necessary direction against the non-applicant Nos. 2 and 3 for taking remedial measures before the High Court of Bombay which being heard on 20<sup>th</sup> December 2013.

7. The applicants submit that in pursuance of the directions issued by the High Court, various schemes namely Rajmata Jigau maternal child health and nutrition mission and other schemes are implemented in a programme called Nav Sanjeevani Programme to reeducate the malnutrition death. The applicants submit that the non-applicant Nos. 2 and 3 has issued circular in the year 2012-13 to the

effect that for taking benefit of the any of the schemes floated by the non-applicant Nos. 2 and 3 it is necessary that the beneficiary should have registered himself with Unique Identification Authority of India and should possess the ADHAR Card alongwith number. If the said ADHAR number is not available with tribal populace the benefit of the schemes cannot be availed by the tribals. The applicants submit that because of the circulars which have been issued by the non-applicant Nos. 2 and 3 about 89% of the people of the tribal population in the entire State cannot avail of the benefits of the schemes floated by the non-applicant Nos. 2 and 3. The applicants submit that only 11% of the tribal in the State of Maharashtra could register themselves and they are possessing ADHAR Card. In view of the situation, since the benefits from the scheme cannot be availed by the persons for whom they are meant, in the year 2013 suddenly death due to malnutrition has increased and till December, 2013, 250 children have lost their lives and another 300 may loss their lives since they are in the seriously Malnourished category. In

view of this situation the applicants submit that the non-applicant Nos. 2 and 3 be directed not to insist on ADHAR registration or its number for availing the benefits under the scheme floated by the non-applicant Nos. 2 and 3.

Hence, this application.

**PRAYER**

It is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to :-

- a) pass appropriate order directing the non-applicant Nos. 2 and 3 not to insist on ADHAR Card registration and its number for availing the benefits under the scheme floated by the non-applicant Nos. 2 and 3; and
- b) Pass such further order/s, direction/s as this Hon'ble Court may deem fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

(HARVESH KABRA)  
Advocate for the Applicants

New Delhi

Dated 17.12.2013



IN THE SUPREME COURT OF INDIAORIGINAL JURISDICTIONINTERLOCUTORY APPLICATION NO. OF 2013INWRIT PETITION (CIV.) NO. 494 OF 2012IN THE MATTER OF

Justice K.S. Puttaswamy(Retd)&amp; ANR

... Petitioner

VERSUS

Union of India &amp; ORS.

... Respondents

AFFIDAVIT

I, Rajendra Sadanad Burma, aged about 5 years, Occu :  
 Doctor, R/o Paratwada (Maharashtra) do hereby solemnly affirm  
 and say as under:

1. That I am the applicant in the above noted case and as such I am fully conversant with the facts and proceedings of the case.
2. That I have read and understood the contents of the I.A. and I say that the contents thereof are true and correct to my knowledge.

## VERIFICATION

Verified at Nagpur on this 12<sup>th</sup> day of December 2013 that the contents of para 1 to 2 of this affidavit are true and correct to the best of my knowledge and nothing material has been concealed and no part of it is false.

*Rajendra Sadanad Burma*  
 12/12/13  
 Deponent

*Rajendra Sadanad Burma*  
 12.12.13  
 Deponent

I know and identify the deponent

Advocate

(J.T. Gilda)

(12)  
 solemnly affirmed before me by  
*Rajendra Sadanad Burma*  
 who is identified by Adv. *J.T. Gilda*  
 whom I personally know  
 This 12<sup>th</sup> day of Dec 2013  
*Shanivare*  
 Section Officer  
 High Court of Bombay



"For the purpose of categories C, D, and E teachers with S.T.C., T.D., Jr. P.T.C. Dip. T., Dip.Ed., (post-S.S.C. one year course) qualifications appointed on or after 1st October, 1970 shall be considered as untrained and their seniority shall be fixed in the "F" or "G" category of untrained teachers, as the case may be."

10. This note, therefore, indicates that there was a distinction made amongst the teachers who obtained S.T.C. qualifications prior to 1st October, 1970 and were in service and those who were appointed on or after 1st October, 1970. The petitioner is not the one who is covered by Note 1 and in any case much before the Rules of 1981 were brought into force, respondent No. 2 was already a senior trained graduate Assistant Teacher to the petitioner by following the guide-lines as were set out in the Secondary School Code. The management was, therefore, right in its contention before the School Tribunal that the respondent No. 2 was senior to the petitioner and was rightly promoted to the post of Head Master. Mr. Hazare is the party-respondent in this petition and in any case his claim to the post of Head Master cannot be adjudicated in this petition, more so when his dismissal of appeal attained its finality.

11. Consequently, this petition fails and the same is hereby dismissed. Rule discharged with no order as to costs.

*Petition dismissed.*

CHILD DEATHS DUE TO MALNUTRITION :  
DIRECTIONS TO STATE GOVERNMENT

(R. M. Lodha and S. A. Bobde, JJ.)

SUO MOTU WRIT PETITION ON THE REPORTS PUBLISHED  
IN VARIOUS MARATHI NEWSPAPERS ABOUT THE  
UNTIMELY DEATH OF MANY CHILDREN DUE TO  
MALNUTRITION WITHIN TWO MONTHS IN  
DHULE AND NANDURBAR DISTRICT

*Petitioner*

vs.

STATE OF MAHARASHTRA and others

*Respondents*

**Constitution of India, Arts. 21 and 47** — *Large number of infant deaths and child deaths in the tribal as well as non-tribal areas of State of Maharashtra — Malnutrition is the major contributory factor for such deaths — Directions to State Government issued.*

After considering recommendations of Dr. Abhay Bang Committee, following directions issued : (i) The State Government shall make functional additional 12,684 Anganwadi Centres as per the Government of India guidelines. Failure to do so shall expose the Principal Secretary, Women and Child Development Department, Mantralaya, Mumbai, to an action under the Contempt of Courts Act, 1971. (ii) State Government shall ensure that by 30th September, 2011, the infant mortality rate due to malnutrition is brought down to almost nil in tribal as well as non-tribal areas. (iii) The State Government shall identify malnutrition free villages and maternal death and child death free villages and

felicitate such villages. The State Government shall give responsibility and funds to Gram Panchayats and self-help groups. (iv) The State Government shall involve the local Gram Panchayats, self-help groups and non-Governmental organisations for control of child deaths and malnutrition. (v) Adequate incentives shall be given to officers and workers who have contributed in controlling child deaths and malnutrition and in prevention of child mortality. (vi) To provide more facilities, adequate medicines and kits to Anganwadis which may help in eradicating malnutrition deaths. (vii) Tribal Gram Sabha may be involved where tribal areas are concerned, for the development programme planning. (viii) The Female Pada volunteers must be suitably trained for management of common childhood problems and also for home-based neonatal care. (ix) For emergency referral of pregnant women, transport should be made available. (x) As per infant mortality rate and severe malnutrition, high risk areas should be identified and these areas should be provided with additional budget and requisite resources. (xi) The State Government shall issue instructions to the Collectors of 15 tribal districts to spend minimum of two days in a month in the tribal villages of the district where there is high rate of infant mortality and severity of malnutrition. (xii) The Chief Secretary shall ensure that every single rupee allocated to the various schemes for the purposes of combating child mortality and malnutrition, is used for such purposes timely and percolates down to the needy. (xiii) The State Government shall ensure the availability of the Doctors and the emergency obstetrics Centres. (Para 7)

For respondent-State : *Mrs. Jyoti S. Pawar, Additional Government Pleader, with P. M. Patil, Assistant Government Pleader*

#### ORAL ORDER

**R. M. LODHA, J. :—** In continuation of various affidavits filed on behalf of the State Government and the directions issued by this Court from time to time, further affidavit has been filed on behalf of the State Government by Dr. Raju Manohar Jotkar, Assistant Director of Health Services on September 20, 2006.

2. It is apparent from the affidavit dated September 20, 2006 that the State Government has failed to combat child deaths within the State, tribal as well as non-tribal areas. In 15 tribal districts of the State, in the year 2003-04, the child mortality was 8,321 while in the years 2004-05 and 2005-06, it was 8,003 and 7,700, respectively. That means, there is only a marginal decrease in child death despite the claim of the State Government that various welfare schemes have been launched in the tribal districts. The statement annexed with the affidavit is also revealing and saddens us. It appears that the child death of one to six years of age has been on increase over the years except the marginal decrease last year. It leads us to infer that either the welfare schemes framed by the State Government are not being implemented properly as it should be or that such schemes have failed to have any impact. Is it not slur on the society that even after more than eight years and five decades of independence, the State is having large number of child deaths due to malnutrition as a major contributory factor? In almost all the affidavits filed on behalf of the State Government, from time to time, the statement has been made that the State Government is doing its best to

combat the child deaths and that the welfare schemes are being implemented, but the figures that have come on record belie the claim of the State Government.

3. On 12-12-2003, the State Government constituted Child Mortality Evaluation Committee under the chairmanship of Dr. Abhay Bang. The Committee comprised of 13 other members and has submitted two reports. The first report dealt with improving registration of the infant deaths and the child deaths in the tribal areas and in the second report measures to be taken for curbing infant mortality, child mortality, maternal mortality and malnutrition in the tribal districts of the State have been recommended. In the affidavits filed by the State Government from time to time, the recommendations made by Dr. Abhay Bang Committee and the actions taken in that regard have been mentioned. The facts and figures of the infant and child mortality that have come on record show that the steps taken by the State Government so far are not adequate and much more effective steps need to be taken.

4. We may also notice here the affidavit filed on 4-10-2005 by one Pranali Praveen Chitnis, Under Secretary in the office of the Secretary, Women and Child Development Department wherein the statement has been made that the additional sanctioned 12,684 Anganwadi Centres will be made functional by June 2006.

5. To our specific query to the Additional Government Pleader as to whether the sanctioned additional 12,684 Anganwadi Centres have become functional, the Additional Government Pleader submitted that according to the instructions given by Dr. Prakash Doke, about 80% of the said additional Anganwadi Centres have come into operation; all the additional 12,684 Anganwadi Centres have not become functional.

6. It needs no emphasis by us that by such large number of child deaths; malnutrition being major contributory factor, there is wholesome violation of Article 21 of the Constitution of India by the State Government. The salutary directive given in Article 47 of the Constitution of India that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties appears to be distant dream in tribal areas. If the thousands of children die every year in the State of Maharashtra, more particularly in tribal areas; malnutrition being major contributory factor, the only inference that can be drawn is that the State Government has failed in its primary duty in raising the level of nutrition of feeding mothers and the children.

7. Having considered the recommendations given in the two reports by Dr. Abhay Bang Committee, the magnitude and seriousness of the matter, the action taken so far by the State Government and the Constitutional provisions, we issue the following directions as of now :—

- (i) The State Government shall make functional additional 12,684 Anganwadi Centres as per the Government of India guidelines as set out in the affidavit dated 4-10-2005 by 31-10-2006. Failure to do so shall expose the Principal Secretary, Women and Child Development Department, Mantralaya, Mumbai, to an action under the Contempt of Courts Act, 1971.

- (ii) The State Government shall initiate the Mission "Bal Mrutyu Mukta Maharashtra" (by whatever name called) as suggested by Dr. Abhay Bang Committee and, accordingly, modify "Rajmata Jijau Maternal Child Health and Nutrition Mission" started from 11-3-2005 to ensure that the infant mortality rate due to malnutrition is reduced to almost nil within five years from today. In other words, the State Government shall ensure that by 30th September, 2011, the infant mortality rate due to malnutrition is brought down to almost nil in tribal as well as non-tribal areas.
- (iii) To begin with, the State Government shall, as suggested by Dr. Abhay Bang Committee, identify malnutrition free villages and maternal death and child death free villages and felicitate such villages. To achieve that more and more villages are malnutrition free and maternal death and child death free, the State Government shall give responsibility and funds to Gram Panchayats and self-help groups.
- (iv) The State Government shall involve the local Gram Panchayats, self-help groups and non-Governmental Organisations for control of child deaths and malnutrition.
- (v) While reviewing the assessment of the officers/workers working in the Health Department, officers and workers who have contributed in controlling child deaths and malnutrition and in prevention of child mortality, adequate incentives shall be given to such officers and workers.
- (vi) The scheme, 'Rajmata Jijau Maternal Child Health and Nutrition Mission', be adequately modified by providing more facilities, adequate medicines and kits to Anganwadis which may help in eradicating malnutrition deaths.
- (vii) The State Government, as far as possible, may involve Tribal Gram Sabha where tribal areas are concerned, for the development programme planning.
- (viii) The Female Pada volunteers who have been appointed in the districts must be suitably trained for management of common childhood problems and also for home-based neonatal care. Training programme must start, if not started so far, by 1-1-2007.
- (ix) For emergency referral of pregnant women, transport should be made available or the provision for delivery vans should be made.
- (x) As per infant mortality rate and severe malnutrition, high risk areas should be identified and these areas should be provided with additional budget and requisite resources. If necessary, Nav Sanjivani Programme initiated by the State Government be modified to ensure that it has the desired impact.
- (xi) The State Government shall issue instructions to the Collectors of 15 tribal districts to spend minimum of two days in a month in the tribal villages of the district where there is high rate of infant mortality and severity of malnutrition and during their stay in the tribal villages, the Collectors shall co-ordinate with all agencies,

2006(6) Mh.L.J.]

KRISHNA vs. REVENUE MINISTER

including N.G.Os., involved in the mission. If there is no substantial improvement in combating the child deaths due to malnutrition in a particular district, the poor performance in this regard must be reflected in the service record of the concerned Collector.

- (xii) The Chief Secretary shall ensure that every single rupee allocated in the State budget to the various schemes for the purposes of combating child mortality and malnutrition, is used for such purposes timely and percolates down to the needy.
- (xiii) The State Government shall ensure the availability of the Doctors and the emergency obstetrics Centres not only in district hospitals but also in small places.

8. The Chief Secretary shall submit the compliance report on affidavit by 18-10-2006. Stand over to 19-10-2006.

*Order accordingly.*

TRUE COPY

## IN THE SUPREME COURT OF INDIA

## ORIGINAL JURISDICTION

I.A. NO. \_\_\_\_\_ OF 2013

IN

WRIT PETITION (CIVIL) NO. 494 OF 2012

**IN THE MATTER OF:**

Justice K.S. Puttaswamy (Retd) &amp; Anr. ...Petitioner

Versus

Union of India &amp; Ors.

...Respondents

**AND****IN THE MATTER OF:**

1. Dr. Rajendra Sadanad Burma,  
R/o Paratwada, Distt. Amravati,  
(Maharashtra)

2. Dr. Ravindra Deorai Kolhe,  
R/o Bairagadh, Tq. Dharni,  
Distt. Amravati,  
(Maharashtra)

...Applicants

Versus

1. Union of India,  
Through Ministry of Personnel Affairs,  
New Delhi.

2. State of Maharashtra,  
Through its Chief Secretary,  
Mantaralaya, Mumbai-32  
Maharashtra

3. Secretary,,  
Department of Tribal Development,  
Mantralaya, Mumbai-32,  
Maharashtra.

...Non-Applicants



15

## APPLICATION FOR IMPLEADMENT

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA,  
AND HIS COMPANION JUDGES OF THE HON'BLE  
SUPREME COURT.

The humble application of the  
applicants above-named;

### MOST RESPECTFULLY SHOWETH:

1. By the instant application, the applicants are seeking permission of this Hon'ble Court to be impleaded as a interveners.
2. In the accompanying application for directions, the applicants have placed on record all the facts in detail supported by all relevant documents. The applicants humbly rely upon the same to demonstrate that the applicants have every right to seek relief as prayed in the said application.
3. In this backdrop, it would be evident that the applicants are vitally interested in the proceedings



before this Hon'ble Court in the instant Writ Petition and that they deserve to be impleaded in the matter as interveners. Hence, this application.

**PRAYER**

It is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to :-

- a) grant permission to the applicants to be impleaded as interveners in the instant Writ Petition i.e. Writ Petition (Civil) No. 494 of 2012; and
- b) Pass such further order/s, direction/s as this Hon'ble Court may deem fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

(GARVESH KABRA)  
Advocate for the Applicants

New Delhi

Dated. 17.12.2013

IN THE SUPREME COURT OF INDIAORIGINAL JURISDICTIONINTERLOCUTORY APPLICATION NO. OF 2013INWRIT PETITION (CIV.) NO. 494 OF 2012IN THE MATTER OF

Justice K.S. Puttaswamy (Retd) &amp; ANR

... Petitioner

VERSUS

Union of India &amp; ORS.

... Respondents

AFFIDAVIT

I, Rajendra Sadanad Burma, aged about 51 years, Occu :  
 Doctor, R/o Paratwada (Maharashtra) do hereby solemnly affirm,  
 and say as under:

1. That I am the applicant in the above noted case and as such I am fully conversant with the facts and proceedings of the case.
2. That I have read and understood the contents of the I.A. and I say that the contents thereof are true and correct to my knowledge.

*Rajendra Burma*  
 12/12/13  
 Deponent

VERIFICATION

Verified at Nagpur on this 12<sup>th</sup> day of December 2013 that the contents of para 1 to 2 of this affidavit are true and correct to the best of my knowledge and nothing material has been concealed and no part of it is false.

*Rajendra Burma*  
 12.12.13  
 Deponent

I know and identify the deponent

*[Signature]*  
 Advocate  
 C. J. T. Vidya

⑪  
 Solemnly affirmed before me by  
*Rajendra Sadanad Burma*  
 who is identified by Adv. *J. T. Vidya*  
 whom I personally know  
 This 12<sup>th</sup> day of Dec 2013  
*Shaniware*  
 Section Officer 12-12-13  
 High Court of Bombay



CF 10/13  
 12/12/13